

RESTATEMENT OF FBA PRO BONO PROCEDURES

May 1, 2006

I. **INTRODUCTION.** In 1997, the Bankruptcy Steering Committee of the Federal Bar Association for the Western District of Michigan (the “FBA”), determined that a need existed for a formal program to provide pro bono representations in bankruptcy cases (the “Program”). The Program was established in May of 1997. The purpose of this document is to restate and revise the existing Program.

II. **ELIGIBILITY.**

A. **Applicants.** Persons eligible to seek representation under the Program (“Applicants”) are individual debtors with respect to contested matters and adversary proceedings arising under Title 11 of the United States Code, as well as dependents or former spouses of debtors who wish to pursue the debtor regarding the dischargeability of obligations contained in a judgment of divorce.

B. **Financial Standards.** The Program will apply the same financial standards as are applied by Legal Aid of Western Michigan (copy attached). The Level I standard will typically apply, however, the Program Administrators may determine to apply the Level II standards to Applicants with substantial medical expenses, expenses related to age, employment or infirmity or Applicants with respect to which their current income level is an aberration.

C. **Non-Financial Considerations.** The Program is designed for individuals who, absent the appointment of a pro bono attorney, would be unable to obtain minimally effective representation. In that regard, Applicants meeting the financial eligibility standards may still be denied representation under the Program if, notwithstanding financial circumstances, an Applicant may be able to obtain representation.

Examples of such circumstances include, without limitation, if the applicant is an attorney or has family members or acquaintances who are attorneys and who, absent the appointment of an attorney under the Program, would likely provide legal assistance to the Applicant.

- III. **SCOPE OF REPRESENTATION.** The Program will be restricted to eligible debtors (and former spouses) whose debts are primarily consumer debts. No representation will be provided with respect to filing the base case. Additionally, no representation will be provided to non-debtor co-defendants, nor representation in any related non-bankruptcy court proceedings. The appointment of an attorney under the Program will not include representation on appeals; however, it will include post-judgment motions and proceedings at the trial level. If an appeal is filed for which the pro bono client seeks representation, a new request would have to be made to the Program.
- IV. **ADMINISTRATION.** The Program will be administered by two (2) co-administrators to be appointed by the Bankruptcy Steering Committee. The co-administrators would agree to serve for at least one (1) year. Referrals to the co-administrators of Applicants for pro bono assistance may be made by the sitting bankruptcy judges, attorneys, trustees and the United States Attorney's office. The administrators would contact the Applicant and obtain financial and other information necessary to determine an Applicant's eligibility. If the eligibility criteria are satisfied, the administrators would seek a participating attorney to agree to represent the Applicant. If possible, such attorney will be in the same geographical area in which the case is being heard (i.e. Grand Rapids, Kalamazoo, Lansing, Traverse City or Marquette). Participating attorneys shall be entitled to review the bankruptcy file and meet with the Applicant before deciding whether to accept representation under the program. A sample client retainer agreement has been drafted (copy attached). A copy of the retainer agreement must be filed with the program administrators.

- V. **COSTS.** The Applicants are responsible for paying filing fees and out-of-pocket costs. Litigation costs, however, may be paid through the program following review and approval by the FBA Bankruptcy Steering Committee. If the appointed attorney is able to pursue reimbursements for attorney fees and costs from other parties in the dispute, the attorney shall be entitled to retain any recovered attorney fees, after first reimbursing the payment of any costs such attorney received from the client or the Program.
- VI. **MALPRACTICE INSURANCE.** Each attorney shall maintain his or her own malpractice insurance. Participating attorneys will be required to disclose existing malpractice coverage and policy limits.
- VIII. **CLOSING REPORT.** Assigned counsel will be required to file a closing report, which will include a statement of the work performed and the results obtained, all costs paid and by whom, and the time spent on the case. Closing reports will be submitted to the program administrators.
- VIX. **CONTINUED OVERSIGHT.** The Bankruptcy Steering Committee shall periodically review and modify the pro bono program as deemed appropriate.

THE FEDERAL BAR ASSOCIATION FOR THE
WESTERN DISTRICT OF MICHIGAN
BANKRUPTCY *PRO BONO* PROGRAM

Client Retainer Agreement

Between *pro bono* attorney(s) _____
(hereinafter called "**Attorney**") and _____
(hereinafter called "**Client**").

1. The Attorney will undertake

2. Any staff member or attorney acting on behalf of Attorney is permitted to work on the Client's matters and will keep information pertaining to the case in strictest confidence, consistent with the Michigan Rules of Professional Conduct. Attorney agrees to fully represent the Client's interest. The Client must be notified of all settlement offers and no case can be settled unless the Client agrees.
3. The Client agrees not to discuss this matter with the opposing party or opposing counsel without first consulting Attorney.
4. The Client does not pay any attorney fees except filing and out-of-pocket costs required to continue the case such as witness fees, service of process fees, or transcript fees. Attorney is authorized to pursue attorney fees from the other parties or agencies who may be liable for these fees. Attorney will be allowed to keep any fees recovered after first reimbursing any costs paid by the Client (or the *Pro Bono* Program).

5. Client agrees to provide any change of address and telephone number, to provide needed information, and to appear on time for any hearing or appointment. Client agrees to notify Attorney should income or financial status change. Client understands that eligibility for legal assistance may terminate if Client has a sufficient increase in income or assets.
6. Client can terminate this agreement at any time by giving written notice to Attorney. Subject to court approval, the *Pro Bono* Program or Attorney may also terminate this agreement at any time due to a change in Client's eligibility or other cause.
7. This Agreement is only valid through the trial/hearing stage and does not include representation should an appeal be filed by either party. After the trial/hearing stage, the Client can reapply to the FBA Bankruptcy *Pro Bono* Program and request the appointment of a *pro bono* appellate attorney, if necessary.

This Agreement is made on _____, at _____.

Attorney

Client